

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Petition for Declaratory Ruling to) CC Docket No. 98-62
Declare Unlawful Certain RFP)
Practices by Ameritech)

COMMENTS

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth"), by and through their attorneys, hereby submit their comments regarding the Petition filed by Sprint in this docket seeking a Declaratory Ruling by the Commission that proposed conduct by Ameritech is unlawful and to Order Ameritech to immediately cease any such conduct.

I. INTRODUCTION

Ameritech issued a Request for Proposal (RFP) seeking an interLATA exchange carrier (IXC) with whom to team for the purpose of providing a "joint offer" of services. Under the proposed joint offer Ameritech would provide the local and intralATA services and the IXC would provide the interLATA services to the customer. Prior to any agreement for such an arrangement being consummated,¹ Sprint filed its Petition seeking the relief described above.²

¹ Subsequent to Sprint filing its Petition, Ameritech entered a teaming arrangement with Qwest Communications Corporation pursuant to an agreement entered as of May 6, 1998. This arrangement is similar to the one proposed in Ameritech's RFP.

² Subsequent to Sprint filing its Petition and Ameritech entering an agreement with Qwest, several inter-exchange carriers filed suit in the United States District Court for the Northern District of Illinois seeking a Temporary Restraining Order and a Preliminary Injunction against Ameritech. *AT&T Corp., et al., v. Ameritech*, No. 98 C 2993 (N.D. Ill. Filed May 14, 1998). The Court denied the plaintiff's request for a TRO.

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Teaming arrangements, both prior to and after the passage of the Telecommunications Act of 1996, between a Bell Operating Company (BOC) and an IXC are allowable relationships. Response of the United States to Ameritech's Request for Clarification and Waiver of the Decree Regarding the Offering of Shared Communications and Related Services to Tenants, August 27, 1984, at 30; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, 11 FCC Red 21905, 22047 [¶293] (1996). This premise has not only been accepted by the Commission, Non-Accounting Safeguards Order, supra, but is acknowledged by Sprint in its Petition, Petition for Declaratory Ruling of Sprint Communications Company, Inc., CC Docket No. 98-62, at 8. (April 28, 1998). In its Petition, however, Sprint alleges that the teaming arrangement proposed by Ameritech violates the equal access provisions of 47 U.S.C. §251(g), and the prohibition of a BOC from provisioning interLATA service as codified in 47 U.S.C. §271.

BellSouth's comments do not address the particular merits of Sprint allegations regarding Ameritech's proposed teaming arrangement with an IXC.³ Instead, these comments address the fact that the type of teaming arrangement proposed by Ameritech—one in which an IXC and a BOC team together to offer both local and interLATA services to customers—is allowable under the current statutory scheme and has been found to be acceptable by the Commission. Therefore, the Commission should not issue any Order that impedes a BOC from entering such type an arrangement. To the extent a particular arrangement is challenged, then the Commission must

³ BellSouth contends, however, that any ruling issued by the Commission based only on a Request For Proposal for a potential agreement between Ameritech and an IXC would be premature. Nonetheless, if the Commission does evaluate the specific merits of the RFP, it should do so based on the analysis set forth in these Comments.

evaluate the merits of the challenges based on the facts of the particular agreement between the BOC and the IXC that is at issue.

II. TEAMING RELATIONSHIPS

As stated previously, the Commission has long recognized that a BOC and an IXC could team together to offer services. The rules for allowing a teaming arrangement cannot change simply because the relationship being proposed is one of a BOC and an IXC offering local and interLATA services. And, as with any teaming arrangement, relevant law simply requires that it must be provided on an equal access basis, pursuant to §251(g), and the BOC cannot “provision” the interLATA services.

A. Equal Access

Equal access requirements and teaming with an IXC are not incompatible. As long as the teaming relationship is not exclusive to any one IXC, and the BOC is willing to enter such an arrangement with any IXC on a non-discriminatory basis, the teaming arrangement is fully consistent with a BOC’s equal access obligations.

Non-Exclusivity is an easily discernable condition of any agreement for a teaming arrangement. If a BOC is willing to enter an agreement with other IXCs to form the same type of teaming relationship, then obviously the agreement with any one IXC is not exclusive.

Likewise, if a BOC will enter teaming arrangement agreements with all IXCs under terms and conditions that do not differ from any other IXC, then it meets its non-discrimination requirements. This, of course, does not mean that all IXCs must find the terms and conditions of the teaming arrangement acceptable to them individually, rather, the BOC must make the same

terms and conditions available to all IXC's who want to team with the BOC. Memorandum Order at 4, United States v. Western Electric Co., No. 82-0192 (D.D.C. Sept. 28, 1990). Accordingly, if a BOC is willing to enter a teaming arrangement with all IXC's under the same terms and conditions as with any IXC, it meets the equal access obligations set forth in 47 U.S.C. §251(g).

B. Provisioning of InterLATA Services

In its Petition, Sprint correctly cites 47 U.S.C. §271 as prohibiting a BOC, subject to defined exceptions set forth in §271(g), from "provisioning interLATA services" until it has received authority from the FCC to do so. A teaming arrangement, however, in which the BOC's activities do not constitute "provisioning interLATA services", can exist as an allowable relationship between a BOC and an IXC.⁴

The Commission has provided guidance in defining the meaning of "provision of services" in a recently issued order, Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, 12 FCC Rcd 3824 (1997), vacated on other grounds, Alarm Indus. Communications Comm. v. FCC, 131 F.3d 1066 (D.C. Cir. 1997). In that Order, the question was what constituted the "provision" of alarm monitoring services as that term is used in 47 U.S.C. § 275. In determining the answer the Commission stated "[w]e find that BOC participation in sales agency, marketing and/or various compensation arrangements in connection with alarm monitoring services does not necessarily constitute the provision of alarm monitoring under § 275(a)." Id. at 3841 [¶ 37] (emphasis added). The Commission went on to state that each arrangement should be evaluated on a case-by-case basis to assure that the interest of the BOC

⁴ This assumes, of course, that the BOC's equal access requirements are met as discussed above.

did not become so intertwined with the service provider that the BOC itself may be considered to be engaged in the provision of services. It also noted that if the BOC takes a financial stake in the commercial success of the service provider, it could constitute a provision of services. *Id.* at 3841-3842 [¶¶ 38-39]. Thus, the Commission has provided clear direction regarding the types of relationships that a BOC can enter that do not result in “provisioning” a service.

Obviously, the Commission does not intend to assign different meanings to the identical term “provision” as used in §§ 271 and 275. Moreover, the Commission has opined that a teaming arrangement for the selling or marketing of services would not constitute provisioning of the services *per se*. Therefore, any teaming arrangement in which a BOC will provide local and intraLATA services and will market and sell the interLATA services of an IXC should be evaluated on a case-by-case basis pursuant to the provisioning guidelines established by the Commission in the Alarm Monitoring Order. Under these guidelines, if the teaming arrangement does not constitute provisioning and is provided to all IXCs on an equal access basis, the relationship is allowable.

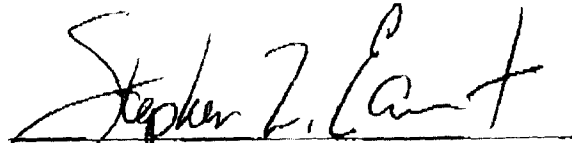
III. CONCLUSION

A BOC may enter into teaming arrangements to market and sell the interLATA services of an IXC. Such an arrangement is proper as long as the BOC enters the arrangement on an equal access basis and does not provision the interLATA service. Further, because of the fact specific nature of the arrangements, the Commission cannot, in resolving Sprint’s Petition, issue

an order of general applicability that would foreclose BOCs from engaging in teaming arrangements which as a general matter the Commission has found to be consistent with the Act.

Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
By their Attorneys

A handwritten signature in dark ink, appearing to read "Stephen L. Earnest", is written over a horizontal line.

~~M. Robert Sutherland~~
Stephen L. Earnest

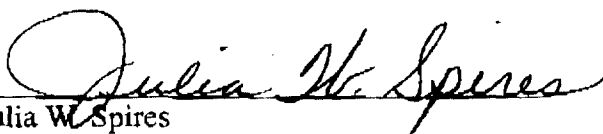
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June 2, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 2nd day of June 1998, serviced all parties to this action with the foregoing COMMENTS, reference docket CC 98-62, by hand service addressed to the parties as set forth on the attached service list.


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